

U.S.S.N.: 09/496,389

Applicant: Boris V. Marchegiani

In the drawings:

The attached eight sheets of drawings replace the original figures. The new corrected drawings are in compliance with 37 CFR 1.21(d). The shading was removed from figure 1, and figures 1-3B, 4A, 4B, 5A, and 5B now have correct margins.

**REMARKS**

In response to the Office Action dated December 23, 2005, Applicant files herewith a Request for Continued Examination pursuant to 37 CFR 1.114 and a Response to the Office Action. Applicant respectfully requests reconsideration. The application is believed to be in allowable condition.

The drawings are objected to because Figure 1 has shading and figures 1-3B, 4A, 4B, 5A, and 5B do not have the correct margins. Accordingly, corrected Replacement Sheets of all Figures accompany this response. No new matter is added with the replacement figures.

Claims 36 and 38 stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 36 and 38 have been amended and are believed to be in allowable condition.

Claims 1, 4, 11, 17, 26, and 35 stand rejected under 35 U.S.C. 103(a) as being unpatentable over PCT Publication No. WO 99/05629 to Borgato (“Borgato”). As discussed below, the claims are allowable over the cited reference.

Claim 1 is directed to a system for utilizing tenders for a complex multi-variable commodity. The system includes the ability to accept a request for an exception to create or modify a term of the at least one tender, wherein the term of the at least one tender that is created or modified by the exception relates to a physical characteristic of the particular commodity.

The Borgato system provides a “clearing house” that is programmed and configured to establish a data structure for arranging and storing various data relating to diamonds to be offered for sale as well as other data concerning those diamonds. However, the Borgato reference does not disclose the capacity to allow users to make exceptions that are directed to changing or creating terms of a tender pertaining to the physical characteristics of the commodity, all of which is recited in claim 1. An exception to a tender pertaining to the physical characteristics of the commodity which is addressed in the current application, is not synonymous with an alternative choice of commodity on which to bid. In Borgato, once the physical characteristic information is entered into the data structure, that information cannot be modified or supplanted with additional information by any user of the system who makes a bid on the diamonds represented in the data structure. Only non-physical information such as price may be altered by the entry of bids. Further, in Borgato, a buyer cannot enter a bid that seeks to

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alter in any way the information pertaining to the cut, clarity, color, etc. of the stone on which he is bidding. Thus, claim 1 clearly distinguishes over Borgato.

Borgato is distinguished in the specification of the present application on page 3, line 4: "Unlike the exchange described in this publication, the method and system according to the present invention provides that each auction is a separate auction where the buyers bid on the specific output of a seller, or the sellers bid to supply the needs of a specific buyer rather than a multi-buyer to multi-seller exchange." This distinguishes and points out the difference between negotiating with a specific buyer or seller to which claim 1 is directed, with the ability to choose an alternative piece of property on which to bid or the ability to change an offer to buy such that any supplier can respond.

The applicant's usage of exceptions to a tender as referenced in the specification, e.g., page 12 line 5, is distinct from the choice of a separate, alternate commodity on which it is possible to bid. This exception functionality as outlined in the specification is lacking in the Borgato reference. Therefore, Applicant submits that independent claim 1 is patentable over Borgato. Claim 4, which depends directly, from claim 1, is patentable for at least the reasons that claim 1 is patentable.

Claim 11 recites a method for utilizing at least one tender created by a tender initiator including the step of accepting input from a tender recipient for generating an exception to create or modify a term of at least one tender, wherein the term of the at least one tender that is created or modified by the exception relates to a physical characteristic of the particular commodity. As discussed above with respect to claim 1, Borgato does not teach or disclose the capacity to allow users to make exceptions that are directed to changing or creating terms of a tender pertaining to the physical characteristics of the commodity. Thus, claim 11 is patentable over Borgato for at least the reasons discussed herein.

Claim 17 recites a system for utilizing at least one tender that is created by a tender initiator. The system enables a tender recipient to request an exception to create or modify a term of the at least one tender, where the term of the at least one tender that is created or modified by the exception relates to a physical characteristic of a particular commodity. As discussed above with respect to claim 1, Borgato does not teach or disclose the capacity to allow users to make exceptions that are directed to changing or creating terms of a tender pertaining to

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the physical characteristics of the commodity. Thus, claim 17 is patentable over Borgato for at least the reasons discussed herein.

Claim 35 recites a set of instructions residing in a storage medium, the set of instructions capable of being executed by a processor to implement a method for utilizing at least one tender. The claim also recites the ability to accept a request for an exception to create or modify a term of the at least one tender, wherein the term of the at least one tender that is created or modified by the exception relates to a physical characteristic of the particular commodity. As discussed above with respect to claim 1, Borgato does not teach or disclose the capacity to allow users to make exceptions that are directed to changing or creating terms of a tender pertaining to the physical characteristics of the commodity. Thus, claim 35 is patentable over Borgato for at least the reasons discussed herein.

Claims 5, 6, 8-10, 15, 16, 19-24, 28, 29, and 36-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Borgato in view of U.S. patent 6,421,653 to May ("May"). May discloses a system for facilitating electronic trading of financial derivative instruments. However, May does not overcome the deficiencies noted above with respect to Borgato. Thus, claims 5, 6, 8-10, 15, 16, 19-24, 28, 29, and 36-40 which depend directly or indirectly from one of claims 1, 11, 17, 26, and 35, respectively, are patentable for at least the reasons that the respective independent claims are patentable over Borgato, as discussed above.

Applicants believe these claims are in condition for allowance, which action is respectfully requested. Should the Examiner have any questions concerning the enclosure submitted herewith, the Examiner is invited to telephone the undersigned attorney of record at the number provided.

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